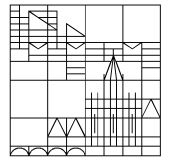


October 2020

Information on data protection in online teaching



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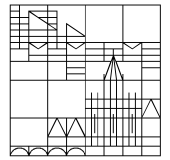
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1. Legal basis

Every natural person has a right to the protection of their personal data. This right is based on European constitutional law, article 8, para. 2, sentence 1 of the Charter of Fundamental Rights of the European Union. In Germany, the right to informational self-determination is based on article 2, para 1 of the German Basic Law (Personal freedoms) and article 1, para. 1 (Human dignity).

Since the General Data Protection Regulation (GDPR) came into effect, this European legal act directly governs data protection. Consequently, the GDPR is binding for data processing at the University of Konstanz.

As per the GDPR, every processing of personal data requires justification. Without such justification the processing of personal data is prohibited. The consent of the person whose data is being processed as per article 6, para. 1 lit. a) GDPR or a legal authorization as per article 6, para. 1 lit. b)-f) GDPR can provide the legal basis. Data processing at the University of Konstanz is justified by its performing tasks in the public interest, article 6, para. 1 lit. e) GDPR; however, only to the extent national regulations authorize these tasks, article 6, para. 3, GDPR. The "Landeshochschulgesetz LHG" Baden-Württemberg (state law on higher education) is based on these national regulations, with an exact description of student data processing in the "Hochschul-Datenschutzverordnung" (university data protection regulation). When this "Hochschul-Datenschutzverordnung" was drafted, no one considered the topic of online teaching. Consequently the university needs to base data processing on other legal frameworks. If there is no detailed regulation on data processing, the University of Konstanz can, after weighing up the interests, refer to the catch-all provision of § 4 of the "Landesdatenschutzge-



setz LDSG” (data protection act) Baden-Württemberg. This allows only a minor interference with the right to informational self-determination.

When the University of Konstanz carries out online courses or online exams, personal data of students have to be processed. According to article 4, no. 1, personal data is any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

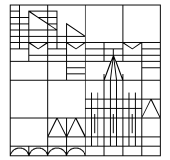
This means that when students take part in an online course without stating their name – and even without active participation – personal data of the student will be processed, because the IP address of their computer they use for logging in will be recorded and may be associated with a person. This data processing is generally interpreted as a minor interference. Consequently, the university can refer to article 6 para. 1 lit. a) GDPR in connection with § 2 LHG and § 4 LDSG as the relevant legal basis.

If students actively participate in an online course, take an online exam or a course is recorded, further personal data such as names, video images, voices and other characteristics will be processed. In this case, the legal basis no longer applies and data processing is only possible with the express consent of the students as per article 6, para. 1 lit. a) GDPR. This fact is also accounted for in the University of Konstanz’s statutes on alternative exam formats („Satzung der Universität Konstanz über den Einsatz alternativer Prüfungsformen und über alternative Prüfungstermine zur Coronafolgenbewältigung“) which apply in this context and are valid until 30 April 2021.

2. What is important for holding a course online?

As described in item 1), “Legal basis”, the University of Konstanz will process personal data in line with a legal authorization if students participate only as mute participants in an online course. This means that the students must be informed about this data processing, but do not have to actively give their consent. In this case, you only have to provide the data protection information. Please use the respective data protection information for the videoconferencing tool you use. The University of Konstanz offers the following videoconferencing tools: BigBlueButton, Cisco Webex and Zoom. More information under item 3.

If students might actively participate in the course (camera, microphone or chat) you will have to get their express consent before the course starts. If



you wish to record the online course, you will have to fulfil very specific requirements (see item 4).

3. How do I have to inform my students?

You have to inform your students about data protection in line with article 13 GDPR.

The information relevant for the videoconferencing tool you use is available on the KIM website, in the bottom right corner at

<https://www.kim.uni-konstanz.de/services/forschen-und-lehren/videokonferenzen/>

Please provide the data protection information in good time, for example by including the corresponding link in the invitation to your course.

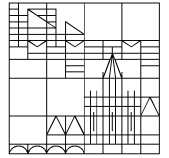
4. How can I get my students' express consent?

As per the GDPR, certain conditions must be met for legally valid consent. Consent must be given voluntarily, i.e. there must be no coercion or significant imbalance of power between the processor (=university) and the person concerned (=student) that affects the granting of consent. As there is an imbalance of power between university and students from the outset - students are dependent on the teaching offered by the university - you have to compensate for this. This means that you have to provide alternatives to students who do not want to or cannot give their consent. These alternatives may be:

- The students participate as mute listeners (it is justifiable to ask these students to show up briefly at the beginning of the course to ensure that only authorized persons participate)
- You can hold the course without these students and provide a course recording in ILIAS
- In case of oral examinations, you can offer alternative dates for an on-campus exam in coordination with the exam administration

If these issues have been settled, you will have to inform your students by providing the data protection information.

The consent of the students must be unambiguous. In case of doubt you will have to prove that explicit consent was given. Such consent must not be given in writing; the registration for a course will be sufficient if the data protection information was taken note of, for example confirmed via email or electronically in a traceable way (e.g. opt-in field for registration via a TYPO-3 mask).



As consent may be revoked at any point in the future, you have to provide this option, even if you plan to make your course available in ILIAS for the entire semester. You might then have to delete or rework parts of the video document to anonymize the students' data.

5. Are students legally entitled to online teaching?

The teacher responsible for a course determines how it is carried out in line with the framework defined by the responsible university bodies (§ 3 para. 3 LG). If a teacher holds the course as an on-campus class, students are not legally entitled to online teaching or online elements. Students who do not participate in a class can always keep up with course content using the extensive information range of our Library, and possibly also ILIAS content, as well as by visiting office hours or exchanging information with other students.